

Remarks

Claims 1-21 are pending in the instant application. Claims 3-8, 11-14 and 18-21 have been withdrawn from consideration; however, Applicants reserve the right to seek patent protection for the subject matter of claims 3-8, 11-14, and 18-21 by divisional application.

In the Office Action mailed November 19, 2003, the Examiner objects to the drawings, the abstract, the disclosure and claims 1, 2, 9, 10 and 15-17. The Examiner rejects claims 1, 2 and 9 – 21 under 35 U.S.C. § 102(b). As indicated above, claims 11 – 14 and 18 – 21 have been withdrawn from consideration, therefore, Applicants assume the Examiner meant to reject claims 1, 2, 9, 10 and 15 – 17 under 35 U.S.C. § 102(b). The Examiner rejects claims 1, 2, 9, 10 and 15 - 17 under 35 U.S.C. §112, 2nd paragraph. Based on the amendments and remarks made herein, Applicants respectfully request that the objections and rejections be withdrawn and that the application be passed to allowance.

1. Response to Paragraph 3 of the Office Action mailed November 19, 2003

In the Office Action mailed November 19, 2003, the Examiner objects to the drawings under 37 CFR 1.83(a), the Examiner states that “[t]he drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 16 must be shown or the feature(s) canceled from the claim(s).”

Applicants respectfully submit that the drawings do show every feature of the invention specified in the claims. The unique feature of claim 16, specifically “the back waist region of the article”, is shown in Fig. 3 and is labeled as “24”. Moreover, Applicants respectfully submit that Figs. 1, 2, 3, 6, 7 and 8 depict elements ascertainable to one of ordinary skill in the art as the back waist region of the article. Accordingly, the objection to the drawings under 37 CFR 1.83(a) is obviated and should be withdrawn.

2. Response to Paragraph 4 of the Office Action mailed November 19, 2003

In the Office Action mailed November 19, 2003, the Examiner objects to the drawings stating that “in Figures 1-2, the lines from 54 and the front 58 should be dashed to denote underlying structure. In Figure 2, the lines from 65 and 67 should also be dashed. In Figure 3, where is the cutaway as described at, e.g., page 10, lines 13-16.”

“Annotated Sheets Showing Changes” and “Replacement Sheets” for Fig. 1 and Fig. 2 are provided herewith as Appendix A. Applicants thank the Examiner for the detailed comments regarding the drawings. The Replacement Sheets include amendments changing the lines from 54

and 58 in Figs. 1 and 2 from solid lines to dashed lines. The Replacement Sheets also include amendments changing the lines from 65 and 67 in Fig. 2 from solid lines to dashed lines.

With regard to the Examiner's objection to Fig. 3, the description in the specification at page 10, lines 13 – 16 has been amended to reflect what is shown in Fig. 3. Applicants submit that no new matter has been added by way of these amendments.

Accordingly, the objection to the drawings stated in Paragraph 4 is obviated and should be withdrawn.

3. Response to Paragraph 5 of the Office Action mailed November 19, 2003

In the Office Action mailed November 19, 2003, the Examiner objects to the Abstract of the disclosure because "terminology which can be inferred, i.e. "The invention relates to" and "of the invention", and language setting forth purported merits of the invention, i.e. "several improvement features" should be avoided." Applicants have amended the Abstract herein. Applicants submit that no new matter has been added by way of these amendments.

Accordingly, the objection to the Abstract of the disclosure stated in Paragraph 5 is obviated and should be withdrawn.

4. Response to Paragraph 6 of the Office Action mailed November 19, 2003

In the Office Action mailed November 19, 2003, the Examiner objects to the disclosure because of six informalities.

1. The Examiner states, "[o]n page 1, line 2, 'claims priority to' should be --claims the benefit of--." Applicants have amended the disclosure to address this objection.
2. The Examiner states, "[t]he Summary of the Invention section,..., and the invention of the claims should be commensurate." Applicants have amended the Summary of the Invention section to address this objection. Support for this amendment can be found throughout the specification as filed, and specifically in claims 1, 2, 9, 10 and 15 – 17.
3. The Examiner states, "[o]n page 10, lines 17-21, Figures 4A – 4I should be described." Applicants have amended the specification to address this objection.
4. The Examiner states, "[t]he description of Figure 8 bridging pages 10 – 11 is incomplete..." Applicants have amended the specification to address this objection.
5. The Examiner states, "[i]n Figure 8, what is 79?" Applicants have amended the specification on page 32 line 24 to read, "The distance between the oversized multiple property fastener 60 and the waist edge 32 is indicated in Fig. 8 by reference numeral '79'."
6. The Examiner states,

In claims 11 – 14 and 18 – 21 Applicants claims the engagement surface or component extending laterally beyond the side edges of the article. As best

understood with reference to the Figures and the paragraph bridging pages 21 – 22, the engagement component is 66, the side edges are 30 and the component 66 extends at 90. However, the side edges have been described as being those of the diaper or article, as best understood element 20, but the diaper or article also includes component 66 as claimed and described and thus the side edges of the diaper or article include element 66, i.e. are defined in part by the component 66, i.e. 90. How can the component 66 extend beyond itself? It appears that the side edges which the component extends beyond are those of the chassis or combination of elements 28, 42 and 44 not those of the entire diaper or article 20. A clear and consistent description of the invention should be set forth.

As set forth in MPEP 2173.05(a), definiteness of claim language must be analyzed, not in a vacuum, but in light of

- (a) The content of the particular application disclosure;
- (b) The teachings of the prior art; and
- (c) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Utilizing the proper analysis, Applicants assert that it would be clear to one skilled in the art that the phrase “wherein the article further includes an engagement surface on the exterior surface that extends beyond the pair of laterally opposed side edges...”, as used in the instant application, refers to a particularly desirable embodiment of the invention wherein a portion of the engagement surface extends laterally beyond the side edges of the article, where the side edges are the edges of the article without including the engagement surface. One skilled in the art would find support throughout the disclosure, and in particular on page 12, lines 31 – 33 where “[t]he laterally opposed side edges 30 of the diaper 20 are generally defined by the side edges of the outer cover 42 that further define leg openings that may be curvilinear.” Thus, without any further definition, one skilled in the art could reasonably ascertain what is meant by the phrase “wherein the article further includes an engagement surface on the exterior surface that extends beyond the pair of laterally opposed side edge. As a result, Applicants assert the Examiner’s objection is in error.

Applicants submit that the amendments described herein merely clarify the disclosure as filed and that no new matter has been added by way of these amendments. Accordingly, the objections to the disclosure stated in Paragraph 6 are obviated and should be withdrawn.

5. Response to Paragraph 7 of the Office Action mailed November 19, 2003

In the Office Action mailed November 19, 2003, the Examiner objects to claims 1, 2, 9, 10 and 15 – 17 because of the following informalities: “[i]n claim 1, line 1 and last line, ‘like’ should be --shaped--. In claim 2, lines 1 and 2, after ‘one’ insert --said--.” Applicants have amended claim 2 to address the second concern. Applicants submit that no new matter has been added by way of this amendment. With regard to the first concern, (“like” should be --shaped--), Applicants disagree that “like” is informal. Pant-like is used throughout the specification as filed. Further the Examiner has provided no explanation as to why “shape” should be preferred over “like”. Accordingly, the objections to claims 1, 2, 9, 10 and 15 – 17 stated in Paragraph 7 are obviated and should be withdrawn.

6. Rejection under 35 U.S.C. §112, second paragraph (Paragraph 8 of the Office Action mailed November 19, 2003)

In the Office Action mailed November 19, 2003, the Examiner rejects claims 1, 2, 9, 10 and 15 – 17 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Further, the Examiner states:

In regard to claim 1, are the fastener area and the zones of the first and second zones of fastening material one and the same, i.e. how many fastener areas at a minimum are there? Two? Three? Also the description of the fastener with respect to the remainder of the claimed features is insufficient to support the language of the “wherein” clause, i.e. is incomplete, i.e. how is the fastener provide stability between the waist regions and maintain the pant-like prefastened configuration, e.g. where is it located on the article? What does it connect to?

Claim 1 has been amended to read in part “a multiple property fastener attached in one of the front waist region and the back waist region” and “the multiple property fastener further comprising at least two zones”. Applicants submit that support for the amendment can be found throughout the specification as filed and specifically on page 21, lines 14 – 15. Applicants submit that no new matter has been added by way of these amendments. Applicants believe the claim as amended, read in light of the specification, particularly points out and distinctly claims the subject matter of the invention. Specifically, the specification at page 3, lines 9 – 10 reads, “...to maintain stability between the front and back waist regions **so that the article remains prefastened when applied as a pant.**” (emphasis added). Further, Table 1 on page 31 compares diapers having different sized fasteners, including conventional diapers. Therefore, Applicants believe claims 1, 2, 9, 10, and 15 – 17 particularly point out and distinctly claim the subject matter which the Applicants

regard as the invention. For these reasons, Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 2, 9, 10 and 15 – 17.

7. Claim Language Interpretation (Paragraph 9 of the Office Action mailed November 19, 2003.

In the Office Action mailed November 19, 2003, the Examiner believes that “disposable” is defined as set forth on page 11, lines 19 – 21. Applicants agree that “disposable” is defined as set forth on page 11, lines 19 – 21.

The Examiner believes that “prefastened”, is considered as configured when fasteners are attached, i.e. a pant-like configuration, to be pulled up or down over the hips of a wearer, i.e. prior to application to the wearer, but does not require forming of such configuration during the manufacturing process. Applicants respectfully disagree. Applicants assert that the articles of the invention are formed in a pant-like configuration during the manufacturing process. Prefastened articles are described throughout the specification; for example:

Page 2, lines 3 – 6:

Conventional diapers are not provided in a “prefastened” condition...

Page 2, lines 15 – 17:

...such conventional diapers are not provided in a pant-like, prefastened configuration and, thus, are not configured to be pulled up or down over the hips of the wearer when the fasteners are attached.

Page 11, lines 10 – 16:

The prefastened absorbent articles are also refastenable such that they can be secured to and removed directly from the waist of the wearer and easily inspected to determine if they have been soiled during use. As such, the pant-like, prefastened, disposable absorbent articles of the present invention can function in a similar manner to conventional training pants when left in the prefastened, pant-like configuration, or they can be unfastened prior to or during use to function in a refastenable manner similar to conventional diapers.

Page 29, lines 33 – 35:

The hook and tape fasteners provided on currently available diapers cannot simply be positioned in a front waist region 22 of a diaper to provide a pant-like, prefastened configuration. Conventional fasteners do not have the proper dimensions to provide a functional prefastened article.

Therefore the specification supports, for purposes of the present invention, that a “prefastened” article, is an article that is configured, when fasteners are attached, i.e. a pant-like

configuration, to be pulled up or down over the hips of a wearer, i.e. prior to application to the wearer, and does require forming of such configuration during the manufacturing process.

The Examiner believes the terms "multiple property", "non-abrasive" and "oversized" have not been specifically defined and therefore will be accorded their common, i.e. dictionary, definition. The Examiner believes that "multiple property" is defined as having more than one property, i.e. any property. One having skill in the art would recognize that the specification supports, for purposes of the present invention, that a "multiple property fastener" is a fastener that has multiple properties related to fastening, for example, the fastener may have the property of engagement and the property of non-abrasiveness. Specifically, page 4, lines 30 – 32 reads "[t]he multiple property fasteners of the invention provide multiple features such as reliable engagement and skin friendliness (or reduced abrasiveness) in a single fastener."

The Examiner believes the term "non-abrasive" is defined as not "causing abrasion, harsh, rough", not "to rub off or wear away by friction". On page 4, lines 30 – 32, the specification reads, "[t]he multiple property fasteners of the invention provide multiple features such as reliable engagement and skin friendliness (or reduced abrasiveness) in a single fastener. Therefore, for purposes of the present invention, "non-abrasive" is defined as skin friendly.

The Examiner believes the term "oversized" is considered a relative term absent claiming of specific dimension thereof. Table 1, located on page 31 of the specification, compares diapers having different sized fasteners, including conventional diapers. The specification goes on to discuss the relative benefits of having fasteners oversized **in comparison to conventional diapers**. Therefore the specification supports, for purposes of the present invention, that an "oversized fastener", is a fastener that is larger in size than the fastener of a corresponding conventional diaper.

With regard to the term "mechanical fastening material" the Examiner references page 9, lines 2 – 3, and page 22, lines 7 – 10. The specification reads at page 9, lines 2 – 3, "[i]n addition to using traditional hook and loop components, the multiple property fasteners could also be fabricated using adhesive or tape materials." Page 9, lines 2 – 3, does not reference the term "mechanical fastening material." The specification reads at page 22, lines 7 – 10, "[s]uitable fastening materials to provide the engageable portions of the multiple property fasteners 60 are well known to those skilled in the art and can include adhesive tape tab fasteners, hook and loop fasteners, mushroom fasteners, snaps, pins, belts and the like, and combinations thereof." Page 22, lines 7 – 10, does not reference the term "mechanical fastening material." The specification at page 5, lines 29 – 32 reads, "[t]he first mechanical fastening material is desirably selected to provide strong engagement with another surface. **When the mechanical fastening material is a hook-type material**, it is desirable to select a hook that provides strong engagement with a loop-

type material" (emphasis added). Accordingly, the specification supports that the term "mechanical fastening material" should be accorded the common definition as is known in the art and include at least hook- type material.

8. Rejection under 35 U.S.C. §102(b) (Paragraph 10 of the Office Action mailed November 19, 2003)

In the Office Action mailed November 19, 2003, the Examiner rejects claims 1 -2 and 9 – 21 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,957,908 issued to Kline et al. (hereinafter "the Kline patent") and thereby U.S. Patent No. 4,946,527 issued to Battrell (hereinafter "the Battrell patent") As indicated above, claims 11 – 14 and 18 – 21 have been withdrawn from consideration, therefore, Applicants assume the Examiner meant to reject claims 1, 2, 9, 10 and 15 – 17 under 35 U.S.C. § 102(b).in Paragraph 10. This rejection is respectfully **traversed**.

With regard to claim 1, second full paragraph, the Examiner notes that the size of the fastener area of the fastener relative to the overall size of the fastener has not been claimed, i.e. at a minimum it can be only a portion thereof. Applicants agree that the present invention as claimed includes fasteners having a variety of sized fastener areas. The Examiner also notes that the engagement ability of the first and second materials has not been claimed, i.e. could be the same, nor is it claimed that the engagement zone is also non-abrasive due to the second material, i.e. both zones could be non-abrasive, equally so or not. The Examiner also notes that the claim does not require that the zone be non-abrasive due to the second material. The Examiner further notes that the claim does not require that the material be non-unitary, that each zone only includes the one material, that the zone be entirely covered by the material or that the first and second materials have to be different materials. The Examiner also notes that the zones as claimed could be two zones of the same material.

The second full paragraph of claim 1 has been amended to read (amendment markings included):

a multiple property fastener attached in one of the front waist region and the back waist region, the multiple property fastener defining a fastener longitudinal direction, a fastener lateral direction and a fastener area, the multiple property fastener further comprising at least two zones, at least one engagement zone of a first mechanical fastening material and at least one non-abrasive zone of a second mechanical fastening material wherein the multiple property fastener is oversized to provide stability between the front waist region and the back waist region and to maintain the pant-like, prefastened configuration.

The specification on page 23, lines 1 – 6 reads;

The engagement zones 65 of the multiple property fastener 60 can have a primary function of providing secure and reliable engagement into a loop material or other material or surface desired for engagement. The non-abrasive zones 67 can have a primary function of providing engagement while being "skin-friendly" or less likely to cause irritation of the skin with which these zones come into contact.

This passage in particular, and the specification as a whole supports that the present invention as claimed includes fasteners having a variety of engagement abilities, a variety of non-abrasion levels, and two zones that are not identical.

The Examiner believes the Kline patent discloses a fastener which has a longitudinal direction, a lateral direction and multiple properties, i.e. different strengths and permeabilities, and thereby the Battrell patent has both the property of sheer stress resistance and peel force. The Examiner also believes the Kline patent discloses a fastener area, at least one engagement zone of a first mechanical fastening material and at least one engagement zone of a second mechanical fastening material. The Examiner further believes the Kline patent at col. 22, lines 9 – 12 discloses that the fasteners do not irritate the wearer's skin. The Examiner also believes the Kline patent discloses oversized fasteners, and that the fasteners provide stability between waist regions and maintains a pant-like configuration. The Examiner believes that the "wherein" clause of claim 1 of Applicants application recites properties, function and capabilities of the claimed structure and that the Kline patent also includes such structure, and therefore, "there is sufficient factual evidence to conclude that the properties, functions and capabilities of such claimed structure would also be inherent in the same structure of [the] Kline [patent]." With regard to claim 2, the Examiner references Fig. 7, col. 16, lines 30 – 62, col. 17, line 14 – col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17 – 19. The Examiner also believes the Kline patent discloses "the zone 253" or a portion thereof and an equal and adjacent portion of "zone 254" can include the "engaging component 202" and such "zone 253" or portions thereof and equal portion of "zone 254" define the fastener area. With regard to claim 9, the Examiner references col. 17, lines 62 – 63, and lines 32 – 37 of the Kline patent, and thereby col. 8, lines 40 – 41 of the Battrell patent. With regard to claim 10, the Examiner references col. 17, lines 32-37 of the Kline patent, and thereby col. 8, lines 30 – 56 of the Battrell patent. With regard to claim 15, the Examiner references Fig. 3 of the Kline patent. With regard to claim 16, the Examiner references col. 21, lines 5 – 16, Fig. 2, and col. 12, lines 26 – 29 of the Kline patent, and believes the Kline patent discloses the landing member would be identical to the fastener of claim 1, and thus would engage the engaging component of the rear waist region. With regard to claim 17, the Examiner references Figs. 2, 3 and 7 of the Kline patent.

In order to be anticipatory, a reference must explicitly or implicitly disclose each and every element of the claimed invention. The Kline patent relates to absorbent articles having elastomeric

ear panels and a fastening system that provides the user with different options as to how the diapers will be fitted to the wearer. (See col. 1, lines 5-11). The Kline patent does not disclose each and every element of the claimed invention.

Independent claim 1 of the present invention is directed to a pant-like, prefastened, disposable absorbent article that includes an absorbent, a front waist region, a back waist region, a crotch region that extends between and connects the waist regions. The claimed absorbent article also includes a longitudinal direction, a lateral direction, an exterior surface, an interior surface opposite the exterior surface, a pair of laterally opposed side edges and a pair of longitudinally opposed waist edges. The absorbent article further includes a multiple property fastener attached in one of the front waist region and the back waist region. The multiple property fastener defines a fastener longitudinal direction, a fastener lateral direction and a fastener area. The multiple property fastener includes at least two zones: one engagement zone of a first mechanical fastening material and one non-abrasive zone of a second mechanical fastening material. Further the multiple property fastener is oversized to provide stability between the front waist region and the back waist region and to maintain the pant-like, prefastened configuration.

The Kline patent does not disclose (either explicitly or implicitly) each and every element of the claimed invention. For example, the Kline patent does not disclose an article including a multiple property fastener including one non-abrasive zone of a second mechanical fastening material. The Examiner believes that the Kline patent at col. 22, lines 9 – 12 discloses that the fasteners do not irritate the wearer's skin. Col. 22, line 6 – 12 states,

The elements of the fastening system 200 may be disposed on either the garment facing surface 40 or the body facing surface 42 of the diaper 20. In a preferred embodiment, however, the fastening elements are disposed on the diaper 20 such that the fasteners do not irritate the wearer's skin. (emphasis added).

Read in context, the Kline patent does not disclose a non-abrasive fastener. The fastener disclosed in the Kline patent is abrasive otherwise there would be no reason to have them **"disposed on the diaper such that** the fasteners do not irritate the wearer's skin." Therefore the Kline patent does not teach an absorbent article with a fastener including one non-abrasive zone. Further, the passage cited, teaches away from the claimed invention. Specifically, the Kline patent teaches the way to avoid irritation of the wearer's skin is by selectively placing the fastener elements on specific location on the diaper, as opposed to utilizing a non-irritating fastener element which is an aspect of Applicants' invention.

The Examiner believes that the "wherein" clause of claim 1 of Applicants application recites properties, function and capabilities of the claimed structure and that the Kline patent also includes such structure, and therefore, the Examiner believes, "there is sufficient factual evidence to

conclude that the properties, functions and capabilities of such claimed structure would also be inherent in the same structure of [the] Kline [patent]." MPEP 2112.01 states that "[w]here the claimed and prior art products are identical or substantially identical in structure ... a *prima face* cases of either anticipation or obviousness has been established" (emphasis added). As stated above, the claimed structure and the prior art structure are not identical or substantially identical in structure; therefore the inherency rejection is improper.

For at least these reasons, Applicants respectfully submit that independent claim 1 is patentable over the Kline patent. Moreover, claims 2, 9, 10 and 15 – 17, which depend from independent claim 1, are also accordingly patentable over the Kline patent.

Additionally, dependent claim 2, which depends from independent claim 1, is directed to a pant-like, prefastened, disposable absorbent article where there is one engagement zone covering one half of the fastener area in the fastener longitudinal direction and there is one non-abrasive zone covering the other half of the fastener area in the fastener longitudinal direction. The Kline patent does not disclose (either explicitly or implicitly) each and every element of the invention of claim 2. For example, the Kline patent does not disclose an article where there is one engagement zone covering one half of the fastener area in the fastener longitudinal direction and there is one non-abrasive zone covering the other half of the fastener area in the fastener longitudinal direction. As stated above, the Kline patent does not teach an article with a fastener including one non-abrasive zone. For at least these additional reasons, Applicants respectfully submit that dependent claim 2 is patentable over the Kline patent. Based on the foregoing, Applicants respectfully request that the rejection under 35 U.S.C. §102(b) be withdrawn.

In conclusion, and in view of the amendments and remarks, reconsideration and withdrawal of the Examiner's rejection of claims 1, 2 and 9 – 21 under 35 U.S.C. § 102(b) is respectfully requested. As indicated above, claims 11 – 14 and 18 – 21 have been withdrawn from consideration, therefore, Applicants assume the Examiner meant to reject claims 1, 2, 9, 10 and 15 – 17 under 35 U.S.C. § 102(b). Further, in view of the amendments and remarks, reconsideration and withdrawal of the Examiner's rejection of claims 1, 2, 9, 10 and 15 – 17 under 35 U.S.C. §112 2nd paragraph is respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-4558.

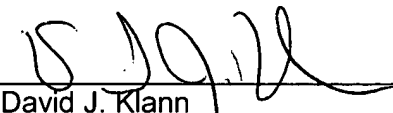
The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit

Appl. No. 10/017,894
Amdt. dated March 3, 2004
Reply to Office Action of November 19, 2003

Account. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.
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The undersigned may be reached at: 920-721-4558.

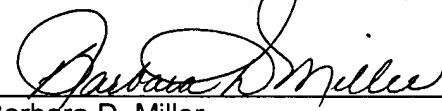
Respectfully submitted,
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CERTIFICATE OF MAILING

I, Barbra D. Miller, hereby certify that on March 3, 2003, this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450.

By: 

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